



SCHOOL CHOICE

ISSUES

APRIL 2008

IN DEPTH

FIFTY EDUCATIONAL MARKETS:
A Playbook of State Laws and Regulations Governing Private Schools

By Christopher Hammons, Ph.D.

FIFTY EDUCATIONAL MARKETS: **A PLAYBOOK OF STATE LAWS AND** **REGULATIONS GOVERNING PRIVATE SCHOOLS**

Prepared By:
Christopher Hammons, Ph.D.
Senior Fellow
Friedman Foundation for Educational Choice

April 2008

THE FRIEDMAN
FOUNDATION
FOR
Educational
Choice

ABOUT THE AUTHOR



Christopher Hammons, Ph.D. is an associate professor of political science at Houston Baptist University, where he teaches courses in constitutional history, political theory, and politics. He also serves as director of the school's Master of Liberal Arts program. He has published in journals including the *American Political Science Review*, the *Albany Law Review*, *Education Next* and the *Houston Business Journal*, and is the co-author of *Constitutionalism of the American States*. He is a senior fellow at the Friedman Foundation for Educational Choice and a senior research fellow for the Texas Public Policy Foundation. He writes about education policy and has conducted research on school choice, remedial education, special education, and home schooling. A study he co-conducted on special education was presented in testimony to the United States Congress, and his work has been presented to the Texas State Board of Education and was the subject of an NBC Nightly News special segment. He received a B.A. in Government and History from the University of Texas at Austin in 1991 and an M.A. and Ph.D. in Political Science at the University of Houston in 1997.

ABOUT THE FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE



The Friedman Foundation for Educational Choice, dubbed “the nation’s leading voucher advocates” by the *Wall Street Journal*, is a nonprofit organization established in 1996. The origins of the foundation lie in the Friedmans’ long-standing concern about the serious deficiencies in America’s elementary and secondary public schools. The best way to improve the quality of education, they believe, is to give all parents the freedom to choose the schools their children attend. The Friedman Foundation builds upon this vision, clarifies its meaning to the public and amplifies the national call for true education reform through school choice.

ACKNOWLEDGEMENTS

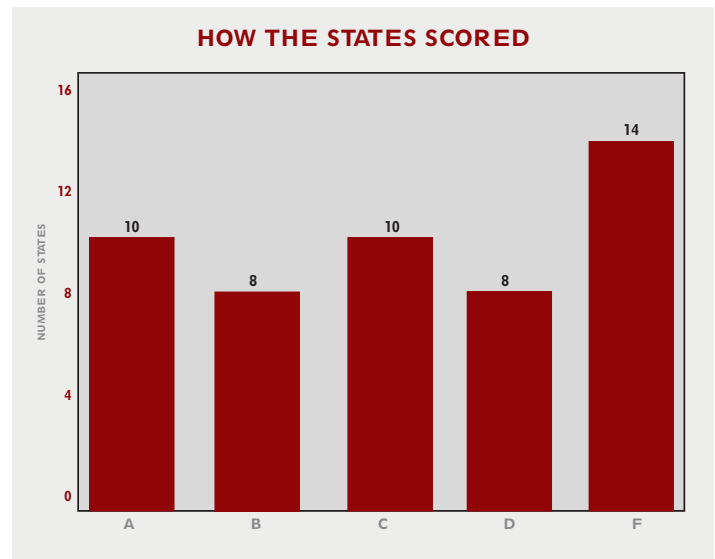
The Friedman Foundation would like to thank Matthew Carr and Justin Castle for their research assistance in preparing this study. We would also like to thank the 29 state departments of education that provided their assistance in ensuring the accuracy of our lists of private school laws and regulations (see endnote 9).

EXECUTIVE SUMMARY

There is a widespread misperception that private schools avoid government oversight or are “unregulated.” In fact, private schools are subject to a wide variety of laws and regulations that run the gamut from reasonable rules to ensure health and safety to unreasonable rules that interfere with school curricula, preventing schools from pursuing the educational approaches that work best for their students. Partly because the public is largely unaware of this body of regulations, it is not often subject to public scrutiny, and thus there is less incentive to reform unreasonable laws and regulations.

This report analyzes the laws and regulations that govern private schools in all 50 states. It documents the extent to which private schools are regulated. A full list of the laws and regulations governing private schools in each state is available on the website of the Friedman Foundation. The degree of regulation varies considerably from state to state.

This report also evaluates the laws and regulations in each state to measure the extent to which they allow a true educational marketplace to flourish. Some states require private schools to meet several legal hurdles—such as state licensing or state-mandated accreditation—to operate within the state. These barriers to entry make it harder for private schools to serve students, and (perhaps even more importantly) reduce the healthy positive effects of competition in education by offering both public schools and existing private schools protection from potential competitors. Some states also impose requirements that private schools follow the state’s idea of the best approach to education, or mandate expensive services that not all schools



believe are necessary or effective. Other states promote a more competitive education market. These states embrace the concept that “public education” means educating the public, rather than a government monopoly on schools.

To compare the extent to which states regulate private schools, states are graded on a scale from A to F. States with higher grades embrace a free-market conception of education to a greater degree than states with a lower score. The report reveals that almost half (22) of the states earned a poor or failing grade of D or F. These states regulate private schools in unreasonable ways, so that the schools’ opportunity to compete in the education marketplace is threatened by excessive government barriers. Only about a third of the states (18) earned a grade of A or B (very good or good) for protecting private schools from excessive government intrusion.

To view the complete list of laws and regulations governing private schools in your state, go to www.friedmanfoundation.org.

TABLE OF CONTENTS

Private Schools in America	9
Private School Laws and Regulations	13
Grading the States	15
How the States Scored	21



PRIVATE SCHOOLS IN AMERICA

PRIVATE SCHOOLS IN AMERICA

Public education has long been an American priority, and never more so than now. The National Center for Education Statistics reports that about 49 million children in the United States attend public schools.¹ The cost of educating these children is about \$474 billion, with states spending an average of more than \$10,000 to educate each child.² At no time in our nation's history have we spent more on public education than we do now, even when costs are adjusted for inflation. Future expenditures on public education are expected to increase rapidly, as American public schools take on an ever-increasing student population and the labor market requires better educated citizens.

American society originally considered education to be a way to secure liberty rather than a way to secure labor. The American founders argued that democracy would work only if the people were able to develop the ability to reason, make rational choices in the political arena and resist demagoguery. An educated public, the founders contended, was the surest means of protecting liberty and upholding the ideals of American constitutionalism.

As a result of this enlightened thinking, the founders put great emphasis on educating the public. Common schools sprung up all over the fledgling country to make sure that citizens could read, write and reason. The value of an educated public was even enshrined in early state constitutions, which extolled the virtue of education for a free people. The Massachusetts Constitution, framed by John Adams, declares:

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish ... public schools and grammar schools in the towns; to encourage private societies and public institutions [of learning].³

During the progressive movement of the early 20th century, emphasis on an “educated public” morphed into the call for “public education.” While the terms may seem synonymous, they are not. Modern debate about how best to educate the public incorrectly confuses a public education, meaning government-run schools, with the broader idea of an educated public. In short, the 20th century saw the rise of government-run schools as the central means of securing an educated populace. The result is that public school students outnumber private school students by a margin of 8 to 1.⁴

Over the last several decades, Milton Friedman and other advocates of free markets have argued that there is a better means of educating the public. Friedman and others have maintained that more competition in the education marketplace, with less government regulation and more room for innovation, would cause both public and private schools to improve. Substantial evidence supports the arguments that private schools deliver a better education at lower costs and that competition from private schools has a positive effect on neighboring public schools. As schools compete for students and dollars, teaching and test scores improve, and students are the prime beneficiaries.⁵

Defenders of government schools often counter that private schools are “unregulated,” claiming that private schools are not accountable to the public because the government has no oversight over anything that happens in private schools. The purpose of this report is to examine the extent to which private schools are in fact regulated by state governments. It presents an overview of the scope and variety of laws in each state. What becomes evident is that, while the extent of private school regulation varies tremendously from state to state, private schools are not “unregulated,” in any sense of that word, in any state in the Union. In fact, few states allow the sort of free-market approach to education that reformers desire. To the contrary, most states impose at least some unreasonable regulations on private

schools. This includes barriers to entry in the private school sector, interference in the curriculum and academic decisions of private schools, and mandates for unnecessary services.

The debate over how best to educate our nation's children is an important one; every state in the Union requires that children get a good education. While all 50 states maintain compulsory education requirements every state in the Union also allows parents to decide to how best to educate their children. This includes alternative means such as private schools, rather than in the government-run school system. In fact, this is considered a constitutional right.

In the early part of the 20th century, Oregon tried to require that children within its borders attend public schools only. The U.S. Supreme Court ruled in 1925 that compulsory attendance at public schools was unconstitutional. While the ruling was concerned primarily with the operation of private schools as a right of free enterprise, a related conclusion of the ruling was that parents have the liberty to provide alternative means of educating their children. The court concluded:

*The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. **The child is not the mere creature of the state;** those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations [emphasis added].⁶*

Since this landmark ruling, millions of Americans have continued to choose an option other than public schools. According to the National Center for Education Statistics, slightly more than 6 million children will attend one of 28,000 private schools during the 2007-08 academic year. Private schools make up about 23 percent of all elementary and secondary schools in the United

States. About 75 percent of these private schools have a religious affiliation.⁷

While the ruling in this case would seem to imply that private schools may operate largely free from government interference, the court did not take things that far. In the same case, the court noted that, while states cannot compel parents to send their children to government schools, state governments do have a compelling interest in regulating private schools. This was a point agreed to even by the parents fighting Oregon's mandatory public education laws:

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.⁸

To this end, while the Supreme Court concluded that states cannot compel parents to send their children to public schools, the court also maintained that each state retains the authority to regulate both public and private schools within its boundaries. The manner and extent to which it does so is up to the state.

States must walk a fine line when regulating private schools, however, as many private schools maintain a unique religious or cultural heritage that may be protected by the First Amendment. Moreover, the power to regulate the operation of private schools is the power to determine what students will be taught and how. In effect, while parents have a constitutional right to send their children to the school of their choosing, if the state misuses its regulatory power it can render that choice less valuable by mandating conformity to state preferences in curriculum and pedagogy.



PRIVATE SCHOOL LAWS AND REGULATIONS

PRIVATE SCHOOL LAWS AND REGULATIONS

Since schools in each state are largely regulated by their respective state governments, this report provides a thorough look at state regulations that apply to private schools. The Friedman Foundation obtained the laws and regulations pertinent to private schools in each state, and the author used these to compile a list of the mandates to which private schools were subject. The lists for all 50 states are available at the website of the Friedman Foundation.

Any attempt to compile all the laws and regulations on a given subject is difficult. Each state has an extremely large body of legislative and regulatory enactments. In order to ensure the accuracy of the private school laws and regulations lists as far as possible, the Friedman Foundation contacted the state department of education in each state and gave it an opportunity to offer corrections.⁹ All such corrections were incorporated into the final versions of the lists. Nonetheless, even with this procedure it is likely that our lists are missing at least a few requirements pertinent to private schools. The author and the Friedman Foundation continue to welcome additions and corrections.

The regulations we found fall into a number of categories:

Accreditation, licensing and approval—Many states require that private schools get some sort of approval from the state to operate. In a few cases, this consists only of registering the school with the state, which means completing and filing some paperwork providing the school's name, address and other basic information. However, in most states the process is more difficult and provides the state with an opportunity to reject applicant schools. Some states view this application process as seeking formal "approval" from the state. Schools that do not meet state criteria (which vary a great deal from state to state) can be rejected. Some states require applicant schools to obtain a "license" from the state, which not only

gives the state the opportunity to decline the applicant, but usually also entails regular renewal. The most stringent barrier for private schools seeking entry into the education marketplace is mandatory accreditation. Accreditation usually involves established criteria for the school's staff, faculty, curriculum and facilities. Schools that fail to meet accreditation standards are not considered viable educational alternatives, and parents who send their children to such schools may be in violation of the state's compulsory education requirements. In some states, accreditation is handled by state agencies; in other states it is handled by private accrediting agencies. Some states allow applicant schools to choose their accrediting entity—the state or a private organization.

In some cases states set up a voluntary state-run system of approval, licensure, or accreditation that private schools need not participate in if they do not wish to. While this presents less of a barrier to entry, it still distorts the private school sector by conferring the prestige of state approval upon schools that choose to do things the state's way.

Transparency and reporting—States typically require private schools to file regular reports, including faculty lists, faculty credentials, enrollment, student demographics, test scores, grades, disciplinary reports, health records and financial records.

Curriculum and academics—Many states require private schools to follow state guidelines for curriculum development. This may be a general requirement that private schools teach core classes such as English, math and social studies. Such requirements are necessary to determine what institutions are schools for purposes of the compulsory attendance requirement. However, some states are more specific, requiring that particular health, sex education or multicultural history classes be taught. Some states mandate the number of hours

of each subject that must be taught at each grade level. For instance, a state may require that third graders receive so many hours of science, so many hours of English, so many hours of social studies and so forth. Some states require private schools to assess their students with standardized tests. In addition, there are state mandates regarding private school facilities, teacher and administrator credentials, teacher-student ratios, guidance counselors, librarians and so on.

Health and safety—All 50 states have provisions regulating private schools for health and safety. These include required immunizations, disease control, sight and hearing tests, fire drills and emergency plans.

Miscellaneous—Many states have regulations that do not fit easily in the previous four categories. Most of these focus on two particular issues. The first is state-subsidized educational services; such provisions regulate the extent to which private school students may access public school facilities, extracurricular activities, textbooks and transportation. The second concerns school or local political culture, such as requirements that state and national flags be flown; that the Pledge of Allegiance or a state pledge be recited; or that students be registered to vote when they turn 18.

A quick survey of the states reveals tremendous variety in both the quantity and scope of regulations that govern private schools. Some states, such as Florida and New Jersey, place relatively few regulations on private schools, creating few legal barriers for private schools seeking entry into the education marketplace. Other states, such as North Dakota and Maryland, create substantial hurdles, requiring private schools to get government approval before opening their doors. Many states have unique health and safety requirements for their private schools. California, for instance, requires that teachers in both public and private schools know

how to use a snake-bite kit when accompanying students on field trips in the wilderness. Kansas requires all schools in the state (public and private) to conduct three tornado drills a year. And many states have provisions that reflect the history and political culture of the state. South Dakota, for instance, requires that private schools adopt a curriculum that teaches respect for the heritage and contributions of minority and ethnic groups in the state. Minnesota allows private schools to contract with local public schools to teach students about Native American culture and language. In short, each state is unique in terms of both the number and nature of regulations that affect private schools.

Grading the States

To highlight the differences among the states, each state was given a grade from A to F based on the degree of private school regulation. The state's grade reflects the quantity and scope of regulations that either assist private schools in educating students or make it more difficult for private schools to succeed. States with higher grades embrace a free-market concept of public education, giving private schools easier access to the education marketplace. States with lower grades make it more difficult for private schools to compete.

Grades were determined by allocating points to each state using the scoring rubric found below. The premise for the point system was to measure the extent to which each provision creates or removes barriers to entry in the education marketplace. Regulations that make it easier for private schools to compete resulted in states being awarded points. Regulations that make it more difficult for private schools to compete resulted in states being penalized points. The rationale for each point deduction or addition is given below. Regulations from all 50 states were assessed and scored by two political scientists. No state was assigned a score without the consent of both researchers.¹⁰

OUR SCORING SYSTEM

STATE ACCREDITATION, LICENSING OR APPROVAL

Many states require some form of state approval for a private school to operate. This can take the form of accreditation, licensing or an official approval process. This represents an unnecessary barrier to the operation of private schools, increasing the cost of opening and maintaining a private school and limiting the variety of school options that are available to students. States with voluntary approval were graded twice—once to grade the requirements for schools that choose not to seek voluntary approval, and once to grade the requirements for schools that do seek it. These two scores were averaged to arrive at the state's final score (both of the scores include the -1 point for having a voluntary accreditation system). Points were deducted for any process that was more than nominal. For instance, if a state merely requires that a private school register its contact information with the state, we did not deduct points. But if a state imposes substantive requirements for approval, we deducted points.

<i>Voluntary accreditation, licensing or approval</i>	Even where approval requirements are voluntary, they can be used to pressure private schools and distort free markets by creating the appearance of a superior status for approved schools.	-1 point
<i>Mandatory accreditation, licensing or approval (state or private agency)</i>	Mandatory accreditation, licensing or approval interferes with the free market even if, as is the case in some states, schools have the option to seek accreditation from a private agency in lieu of direct government approval. However, the option to obtain private accreditation at least provides for multiple options and hence keeps control of the market less centralized.	-2 points
<i>Mandatory accreditation, licensing or approval (state only)</i>	In states where accreditation by private agencies is not allowed and mandatory accreditation, licensing or approval must be obtained directly from the state, the unnecessary barrier to entry for private schools is at its most burdensome.	-3 points

CREDENTIALS

Requiring teachers or other school staff to obtain specific credentials or undergo training courses is an unnecessary control mechanism that increases the cost of maintaining a private school—especially where schools are required to hire from the limited pool of candidates who have jumped through all the necessary hoops to gain teaching certification—and reduces the variety of instruction available. A large body of empirical research consistently has found that neither educational credentials nor teacher-training programs lead to better student outcomes. These requirements effectively function as a form of economic protectionism for schools and school staff, without actually improving education.

<i>Educational credentials (less than certification)</i>	Even where full certification is not required, mandating that teachers or administrators must have certain specific credentials creates a barrier for people with expertise in other fields or who would make excellent teachers but lack the required pieces of paper.	-1 point
<i>Certification</i>	Requiring state certification of teachers or administrators is a strict form of government control that allows the state to determine who can and cannot be a teacher or administrator.	-2 points
<i>Professional development</i>	Requiring participation in professional-development programs imposes an expense and time commitment for private schools rather than allowing schools to determine what is the best use of their resources and staff time.	-1 points

CURRICULUM

Government control of private school curricula limits the options available to students and imposes a one-size-fits-all ideology on education. It also restricts private schools' ability to innovate and find better ways to educate their students. In some cases, a controversial practice or ideology is imposed on private schools by state law.

<i>Core classes</i>	Almost every state has a generic provision requiring that private schools offer core classes in English, math, science, civics, etc. Since these requirements are necessary to distinguish schools from institutions that are not schools, we did not penalize states for having them.	<i>No deduction</i>
<i>Curricular content</i>	Some states mandate specific curricular content that private schools must teach.	<i>-1 point</i>
<i>Control of delivery</i>	Some states mandate what classes must be taught at what grade levels or how many hours of each subject are required in each grade level.	<i>-1 point</i>
<i>Sex education (no mandatory content)</i>	Some states require private schools to teach sex education. Even where the specific content of such classes is not specified, the requirement infringes on parents who prefer to educate their own children in this area rather than delegating the task to an institution.	<i>-1 point</i>
<i>Sex education (mandatory content)</i>	In addition to requiring sex education, some states impose specific requirements on what must be taught in these classes.	<i>-2 points</i>
<i>Multicultural ideology</i>	A few states require that private schools offer a "multicultural approach" to education. Requiring private schools to incorporate a controversial ideological agenda is a fundamental intrusion on the rights of private schools and the parents who choose them. Giving private schools the ability to innovate free from state interference is a much more promising way to promote diversity in education; empirical research consistently shows that private school students are more socially tolerant than public school students.	<i>-1 point</i>
<i>Curricular protection</i>	A few states offer specific legal protections for a private school's right to control its own educational curriculum free from state interference.	<i>+1 point</i>

OTHER ACADEMIC REQUIREMENTS

<i>Class size</i>	States that regulate the size of classrooms create unnecessary resource demands on private schools.	-1 point
<i>Standardized testing (school chooses the test)</i>	A large majority of private schools choose to use standardized tests, but schools that wish to provide an educational environment that is not shaped by standardized testing should be free to do so. In addition, requiring these exams limits the schools' ability to offer innovative curricula that may not align with existing tests.	-1 points
<i>Standardized testing (state chooses the test)</i>	When the state picks a particular standardized test and requires private schools to use it, schools' ability to shape their own curricula is further reduced.	-2 points
<i>Standardized testing (mandatory outcome)</i>	Some states require private schools to enforce a minimum performance requirement set by the state, usually as a prerequisite for a high school diploma. This is an even greater intrusion into schools' control over their educational programs.	-1 additional point

REQUIRED SERVICES

<i>Library</i>	States that require private schools to maintain a library and/or media center create unnecessary resource demands for private schools.	-1 point
<i>Guidance counselors</i>	States that require private schools to maintain guidance counselors create unnecessary resource demands on private schools.	-1 points

PARITY FOR SUBSIDIZED SERVICES

States provide public schools with an array of services—buses, textbooks, extracurricular activities and so forth—subsidized by tax dollars. These services give them an advantage over private schools, distorting the market. However, some states require school districts to allow private schools to share in these subsidized services, removing the special advantage for the public schools. We rewarded these states in our grading system. Other states actually require school districts not to permit private schools to share these services, ensuring that the market remains distorted. We penalized these states. Still other states leave school districts to determine for themselves whether to share services. For these state we neither added nor deducted points.

<i>Busing</i>	Some states expressly forbid public school buses from transporting private school students; other states require public school buses to transport private school students.	-1 point for prohibited transportation +1 point for mandatory transportation
<i>Textbooks</i>	Some states prohibit the sale or loan of textbooks purchased with public funds to private school students. Other states require that textbooks be sold to private schools at the discounted state rate or that the state loan textbooks to private school students.	-1 point for prohibited textbook sales or loans +1 point for mandatory textbook sales or loans
<i>Extracurricular activities</i>	Some states prohibit students who attend private schools from participating in extracurricular activities offered at public schools. Other states require public schools to allow private school students to participate in extracurricular activities.	-1 point for prohibited access to extracurricular activities +1 point for mandatory access to extracurricular activities
<i>Health services</i>	Some states prohibit private school students from receiving health and diagnostic services offered by public schools. Other states require that public schools allow private school students access to health and diagnostic services.	-1 point for prohibited access to health and diagnostic services +1 point for mandatory access to health and diagnostic services
<i>Professional development</i>	Some states prohibit private school teachers and administrators from attending taxpayer-funded training and workshops. Other states require that private school teachers and administrators be allowed to attend these programs.	-1 point for prohibited access to professional development programs +1 point for mandatory access to professional development programs

Once numeric scores were assigned to each state, a letter grade was awarded using the grading system outlined in Table 1. Any state that received a positive score was given a letter grade of A because such states impose few barriers for private schools and in many cases may actually work to promote private schools. Working backward from a score of 0, every decrease of a half point in the score resulted in a lower letter grade. For imposing an excessive amount of regulations on private schools, any state that received a score of -5 or lower received a failing grade.

As noted above, many states have voluntary systems of approval, licensure or accreditation of private schools. These systems do influence the private school market, but obviously not as much as mandatory systems do. However, even states with voluntary systems of approval maintain

regulations that apply to all schools, whether they are approved or not. To represent this, we scored such states twice, once for the laws and regulations that were mandatory for all schools, and a second time including both those requirements and the additional, voluntary requirements necessary for state approval, licensure or certification. We used the average of these two values as the state's score. In cases where states had different regulatory regimes for different types of schools (such as elementary and secondary schools, or religious and non-religious schools) we did not score the tracks separately. In these cases the more burdensome track is not voluntary for the schools that are subject to it; schools subject to unreasonable regulations cannot choose to free themselves of it by declining to apply for state approval.



HOW THE STATES SCORED

HOW THE STATES SCORED

Table 1

LETTER GRADE EQUIVALENTS OF CALCULATED SCORE											
-5 or lower	-4.5	-4	-3.5	-3	-2.5	-2	-1.5	-1	-0.5	0	Any positive score
F	D-	D	D+	C-	C	C+	B-	B	B+	A-	A

Table 2 summarizes the results, and Table 3 provides a comprehensive list of the point additions and deductions applied in each state. What becomes immediately apparent is the wide variation in the extent to which states regulate private schools properly. At the high end, a few states such as Florida, New Jersey and Connecticut place very few barriers in the way of private schools seeking to open their doors. At the other end of the grading scale, 14 states, including Alabama, New York and North Dakota, earned failing grades.

Florida was a high-scoring state, earning a grade of A. Florida doesn't require any sort of formal approval to start a private school. Each year, schools must file some basic information with the state (name of school, contact information, enrollment, etc.) but this requirement is not intrusive. In addition, state law makes it clear that neither the state nor any school district is authorized to oversee or exercise control over the curricula or academic programs of private schools. In short, Florida not only seeks to protect access to the education marketplace for potential private schools, but makes sure that, once established, schools have the ability to operate free from government intrusion.

Connecticut is another high-scoring state. Similar to Florida in its approach, Connecticut doesn't require private schools to pass any state-mandated hurdles to open their doors. Private schools in Connecticut may register with the state, seek approval from the state or seek accreditation from a private

agency, but all three options are voluntary. Connecticut also mandates that private schools have access to many public school services, such as school nurses and bus transportation. The thinking in Connecticut seems to be that, since public dollars have paid for many of these services, all students should have access to them, even if the student is not enrolled in a public school.

Alabama, with a score of -6, is a typical failing state. In Alabama, all private schools must register with and be licensed by the state unless they are affiliated with a church or religion. The state also mandates that private schools must hire certified teachers, but exempts religious schools from this requirement. In addition, the state requires private schools to follow detailed reporting requirements.

No state scored lower than North Dakota, with a score of -11. North Dakota makes it extremely difficult for private schools to open their doors. All private schools must be approved and accredited by the state. In addition, all private schools must hire certified teachers who teach only in the fields in which they are certified. Private schools must require students to achieve at least the same number of credit hours in each subject as students in public schools and must follow state guidelines regarding class sizes and teacher-student ratios. All private school students must be assessed using a standardized test. Private schools also must maintain certain defined library facilities and a given number of guidance counselors.

Table 2

GRADES AND SCORES BY STATE

STATE	SCORE	GRADE	STATE	SCORE	GRADE
Alabama	-6	F	Montana	-5	F
Alaska	-1	B	Nebraska	-5.5	F
Arizona	0	A-	Nevada	-5	F
Arkansas	0	A-	New Hampshire	-2	C+
California	-1	B	New Jersey	+2	A
Colorado	-1	B	New Mexico	-2	C+
Connecticut	+1	A	New York	-6	F
Delaware	+1	A	North Carolina	-4	D
Florida	+2	A	North Dakota	-11	F
Georgia	0	A-	Ohio	-3	C-
Hawaii	-2	C+	Oklahoma	-1	B
Idaho	-2	C+	Oregon	-2	C+
Illinois	-2	C+	Pennsylvania	-4	D
Indiana	-4.5	D-	Rhode Island	-4	D
Iowa	-4	D	South Carolina	-5.5	F
Kansas	-5	F	South Dakota	-7	F
Kentucky	-1	B	Tennessee	-6	F
Louisiana	-4	D	Texas	-1.5	B-
Maine	-3.5	D+	Utah	0	A-
Maryland	-6	F	Vermont	-4	D
Massachusetts	-3	C-	Virginia	-1	B
Michigan	-3	C-	Washington	-5	F
Minnesota	-0.5	B+	West Virginia	-3	C-
Mississippi	-5	F	Wisconsin	0	A-
Missouri	0	A-	Wyoming	-5	F

The distribution of grades in Figure 1 indicates that about a third (18) of the states do a good to very good job of providing private schools with the opportunity to compete in the education marketplace. These are states that earned a grade of A or B. They did so by minimizing the burden of regulations that create unnecessary hurdles that private schools must overcome in

order to open their doors. One fifth (10) of the states do a fair or average job of creating opportunity for private schools, meaning they earned a grade of C. But almost half (22) of the states do a poor or failing job of providing opportunities for private schools, earning a grade of D or F. These states impose the most extensive regulation of private schools.

Table 3

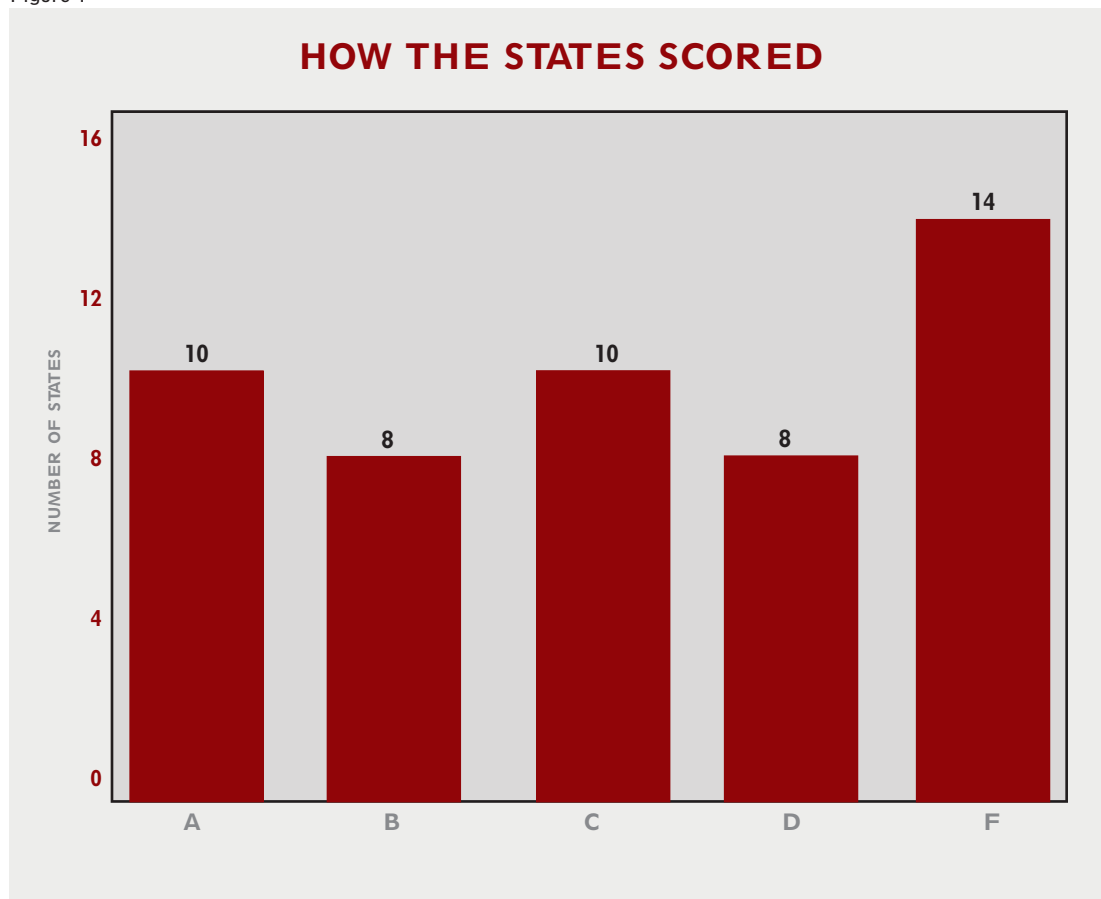
PRIVATE SCHOOL LAWS AND REGULATIONS BY STATE

	STATE APPROVAL			CREDENTIALS			CURRICULUM			
	Voluntary	Mandatory (State or Private)	Mandatory (State Only)	Less than Certification	Certification	Professional Development	Content	Delivery	Sex Ed	Multicultural Ideology
Alabama			-3		-2					
Alaska	-1				-2					
Arizona										
Arkansas										
California										
Colorado	-1									
Connecticut	-1									
Delaware										
Florida										
Georgia										
Hawaii		-2								
Idaho					-2					
Illinois	-1				-1	0/-1			-2	
Indiana	-1				0/-2	0/-1				
Iowa	-1				-2	0/-1		0/-1	0/-2	0/-1
Kansas	-1				0/-2	0/-1		0/-1	0/-1	
Kentucky	-1									
Louisiana	-1			0/-1		0/-1	0/-1	0/-1		
Maine	-1				0/-2		0/-1	0/-1		
Maryland			-3	-1						
Massachusetts			-3							
Michigan			-3	-1						-1
Minnesota		-2		-1						
Mississippi	-1				0/-2	0/-1	0/-1	0/-1		
Missouri										
Montana	-1				0/-2	0/-1	0/-1	0/-1		
Nebraska	-1			0/-1	0/-2	0/-1	-1	-1		
Nevada			-3	-1						
New Hampshire			-3							
New Jersey										
New Mexico	-1									
New York			-3				-1	-1		
North Carolina										
North Dakota			-3		-2		-1	-1		
Ohio	-1			0/-1	0/-2					
Oklahoma	-1									
Oregon	-1			0/-1						
Pennsylvania		-2			0/-2		0/-1	0/-1		
Rhode Island			-3				-1	-1		
South Carolina		-2		0/-1		0/-1	0/-1	0/-1		
South Dakota			-3		0/-2					
Tennessee		-2		0/-1	0/-2		0/-1			
Texas	-1			0/-1						
Utah										
Vermont		-2		0/-1			-1			
Virginia	-1									
Washington			-3		-2			-1		
West Virginia	-1						-1			
Wisconsin	-1									
Wyoming			-3		-2					

Note: States with a voluntary approval system were scored once for requirements within the voluntary system and once for requirements outside it. Where two scores are listed (e.g. 0/-1) this indicates different requirements for schools that do or do not seek state approval.

	OTHER ACADEMICS		SERVICES		PARITY FOR SUBSIDIZED SERVICES				
Curricular Protection	Class Size	Standardized Testing	Library	Guidance Counselors	Busing	Textbooks	Extracurricular Activities	Health Services	Professional Development
			-1						
					+1				
						-1			
					+1			+1	
					+1				
+1							+1		
					+1	+1	0/+1		
	0/-1	0/-2	0/-1		+1	+1			
		0/-2	0/-1	0/-1	0/+1				
			-1						
	0/-1								
	-1		-1						
					+1	-1			
							+1	+1	+1
		0/-1			+1	+1		+1	
	0/-1	0/-1	0/-1	0/-1		0/+1			
+1		-1							
	0/-1		0/-1	0/-1					
	0/-1	0/-1	0/-1		+1				
	-1		-1		+1				
					+1				
					+1	+1		+1	
		0/-1							
		-3	-1	-1		+1		+1	
		-2							
	-1	-1	-1	-1					
		0/-3			+1			0/-1	
			0/-1		+1				
	0/-1		0/-1						
					+1				
		0/-1	0/-1	0/-1					
		-2							
	0/-1	-1	0/-1						
		-1							
+1									
		0/-2							
					+1				

Figure 1



Conclusion

If we are serious about educating the public, doing so may require us to seek alternatives to government monopolies in the education marketplace. This report illustrates that private schools are not “unregulated,” as many people believe. To the contrary, state governments exercise significant power over private schools. While tremendous effort

has been made to reform public education, an alternative means of reforming education without touching public schools would be to reform the myriad of unreasonable regulations that many state governments have placed on private schools. Doing so may be the best means of educating the public without interfering with public education.

ENDNOTES

¹ *Digest of Education Statistics* 2006, National Center for Education Statistics, 2007, Table 33.

² *Digest of Education Statistics*, Tables 163 and 167.

³ Massachusetts Constitution, Chapter 5, Section 2.

⁴ "Characteristics of Private Schools in the United States: Results From the 2003-2004 Private School Universe Survey," National Center for Education Statistics, March 2006.

⁵ For a summary of the empirical evidence on these effects, see Greg Forster, "Monopoly versus Markets: The Empirical Evidence on Private Schools and School Choice," Friedman Foundation for Educational Choice, September 2007.

⁶ *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925), 535.

⁷ "Characteristics of Private Schools."

⁸ 268 U.S. 510, 534.

⁹ Of the 50 state education departments we contacted, 17 (CA, CO, HI, ID, IN, KS, MA, ME, MN, MS, MT, ND, NE, OK, PA, RI and UT) did not respond to our inquiry; 29 (CT, DE, FL, GA, IA, IL, KY, LA, MD, MI, MO, NC, NH, NJ, NM, NV, NY, OH, OR, SC, SD, TN, TX, VA, VT, WA, WI, WV and WY) either approved our lists as they were or offered corrections, all of which we incorporated; two (AR and AZ) declined to review our lists; one (AK) responded to our initial inquiry but failed to return our follow-up communications; and one (AL) told us our list contained inaccuracies but declined to specify any of them or provide us with any other guidance.

¹⁰ The two graders were the author and Friedman Foundation Senior Fellow Greg Forster.



THE FRIEDMAN FOUNDATION WELCOMES YOUR SUPPORT

Our goal is to promote Milton and Rose Friedman's vision of a society where all parents have the freedom to choose the school that works best for their children, regardless of whether that school is publicly or privately run. One way we achieve this goal is by producing studies and reports on school choice, debunking the myths put forward by opponents of educational freedom. As a nonprofit organization, our work relies solely on the generous support of our many friends and donors. Please send your tax-deductible gift today, and help advance liberty and choice in our educational system. With your help, America can achieve the Friedmans' vision of universal school choice.

Dr. Milton Friedman, Founder
Nobel Laureate and Founder of the Friedman Foundation

BOARD OF DIRECTORS

Dr. Rose D. Friedman, Chairperson
Noted Economist and Founder of the Friedman Foundation

Gordon St. Angelo
President & CEO

Janet F. Martel, Vice Chairperson
Attorney

Lawrence A. O'Connor, Jr., Treasurer
Executive Director, Butler Business Accelerator

Charles H. Brunie
Brunie Associates

Dr. Patrick Byrne
Chairman of the Board and President, Overstock.com

Robert C. Enlow
Executive Director & COO

Dr. David D. Friedman
Professor, Santa Clara University

William J. Hume
Chairman of the Board, Basic American, Inc.

Samuel H. Husbands, Jr.
President, Husbands Capital Markets

Sandra Jordan
Owner & Creative Director, Jordan Winery

Howard S. Rich
Rich & Rich

Fred Reams
Reams Asset Management

Dr. Michael Walker
President, The Fraser Institute Foundation



One American Square • Suite 2420
Indianapolis, IN 46282

Nonprofit Org.
U.S. Postage
PAID
Indianapolis, IN
Permit #8478